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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

Docket ID FEMA-2014-0009

RIN 1660-AA81

Amendment to the Public Assistance Program's Simplified Procedures Project

Thresholds

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is revising two dollar figures in its regulations governing the Public Assistance Program's project thresholds. FEMA is revising the monetary thresholds for when FEMA will process an application using "simplified procedures."

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Liza Davis, Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, FEMA, 202-646-4046, liza.davis@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

FEMA's Public Assistance program provides grants to State, Tribal, and local governments, as well as eligible private nonprofit organizations, for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-

damaged facilities after a Presidentially-declared major disaster.¹ Each grant award is categorized as either a large or small project, which is determined by a monetary threshold set each year by FEMA pursuant to statute.² The maximum threshold for FY2014 is \$68,500³; all projects below this amount are categorized as small projects, and all projects at or above this amount are categorized as large projects. In addition, each project must meet a minimum threshold of \$1,000.⁴

The Sandy Recovery Improvement Act of 2013 (SRIA)⁵ required FEMA to analyze the Public Assistance project thresholds and, within one year of SRIA's passage, to submit a report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate with its findings.⁶ On January 29, 2014, FEMA submitted this report to Congress, and a copy is included in the docket for this rule on www.regulations.gov under docket ID FEMA-2014-0009.⁷ In the report, FEMA recommends a maximum threshold of \$120,000, and a minimum threshold of \$3,000.

SRIA requires FEMA to implement the new thresholds “immediately” following submission of the report to the Congress and “without regard to chapter 5 of title 5, United States Code.”⁸ Accordingly, this action updates FEMA's Public Assistance

¹ The Public Assistance program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5170b, 5172, 5173, 5192.

² See 42 U.S.C. 5189; 44 CFR 206.203(c), 206.205. FEMA obligates money for a small project based on an estimate of the project cost; FEMA obligates money for a large project based on actual project costs as the project progresses and cost documentation is provided to FEMA. See 44 CFR 206.203(c); Public Assistance Guide, FEMA 322 (June 2007), Chapter 3, “Applying for Public Assistance,” “Project Formulation” available at <http://www.fema.gov/public-assistance-local-state-tribal-and-non-profit/public-assistance-guide-3>.

³ See 78 FR 64232 (Oct. 28, 2013).

⁴ 44 CFR 206.202(d)(2).

⁵ Public Law 113-2, section 1107, codified in relevant part at 42 U.S.C. 5189.

⁶ See 42 U.S.C. 5189(b)(1).

⁷ A copy of the report is also available at <http://www.fema.gov/media-library/assets/documents/90458>.

⁸ See 42 U.S.C. 5189(b)(2)(A).

regulations with the new thresholds, which will both be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.⁹

FEMA will be publishing a notice in the Federal Register in the near future to seek public comment on the report for the purpose of informing future revisions to the thresholds. SRIA requires FEMA to review the thresholds every three years.¹⁰

Administrative Procedure Act

Generally, the Administrative Procedure Act (APA) requires a Federal agency to provide the public with notice and the opportunity to comment on agency rulemakings.¹¹ Section 1107 of SRIA, however, directs FEMA to “immediately establish a threshold for eligibility under this section in an appropriate amount, without regard to [5 U.S.C. chapter 5].” Accordingly, this action is not covered by the APA’s requirements related to notice-and-comment rulemaking, and FEMA is immediately establishing the new threshold for eligibility in the Code of Federal Regulations. By implementing the new thresholds via a final rule, FEMA meets the requirement of SRIA to implement the new thresholds “immediately” and without the delay of a proposed rule and public comment period.

The action is limited to updating two dollar figures related to FEMA’s procedures for handling certain grants (the minimum and maximum thresholds for PA projects) and

⁹ See 5 U.S.C. 5189(b)(2)(B).

¹⁰ See 42 U.S.C. 5189(b)(3).

¹¹ See 5 U.S.C. 553.

adding the annual update requirement for the minimum threshold to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.¹²

For the same reasons discussed above, FEMA is implementing this change without the 30-day delayed effective date usually required under section 553(d)(3) of the APA, as such a delay would be contrary to section 1107's requirement to implement the thresholds "immediately."

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs-housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs-housing and community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

1. The authority citation for part 206 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113-2, 127 Stat. 43 (42 U.S.C. 5189a note).

2. In § 206.202, in paragraph (d)(2), remove "\$1,000" and add in its place

"\$3,000" and revise the second sentence to read as follows:

¹² FEMA's current regulations require only a periodic review of the minimum threshold. See 44 CFR 206.202(d)(2). Section 1107 of SRIA, however, requires an annual update based on the Consumer Price Index for All Urban Consumers published by the Department of Labor.

§ 206.202 Application procedures.

* * * * *

(d) * * *

(2) * * * Such \$3,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

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§ 206.203 [Amended]

3. In § 206.203, in paragraphs (c)(1) and (2), remove the number “\$35,000” and add, in its place, the number “\$120,000” wherever it appears.

Dated: February 20, 2014

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.

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